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On behalf of the members of the Association of American Railroads, I am grateful for the opportunity to present freight railroads' views concerning the future of Amtrak and intercity passenger railroading in this country.

Although there are numerous commuter rail and subway systems, Amtrak (more formally, the National Railroad Passenger Corporation) is the sole provider of intercity passenger rail transportation in the continental United States. It operates over more than 22,000 route miles, carries 23 million passengers annually, and serves more than 500 stations in 46 states and the District of Columbia. Amtrak is also the nation's largest contract provider of commuter rail service for state and regional authorities, serving an additional 54 million commuter passengers per year in California, Connecticut, Maryland, Massachusetts, and Virginia. Amtrak has approximately 23,500 employees.

Amtrak could not exist without the facilities and services of freight railroads. Other than the approximately 730 route-miles Amtrak owns (primarily in the Northeast Corridor bounded by Boston and Washington, and in Michigan), Amtrak operates the remaining 97 percent of its system almost exclusively over tracks owned and maintained by our nation's privately-owned freight railroads, via mandatory access at below market rates. Freight carriers also furnish other essential services to Amtrak including train dispatching, emergency repairs, station maintenance, and, in some cases, police protection and communications capabilities.

Intercity passenger rail has a role in alleviating highway and airport congestion, decreasing dependence on foreign oil, reducing pollution, and enhancing mobility and safety. Nevertheless, throughout its history, Amtrak has faced recurring questions concerning its funding needs and the proper role intercity rail should play in our nation's passenger transportation system. Today, Amtrak faces perhaps its most urgent and serious reappraisal yet.

Our nation's privately-owned freight railroads welcome this reappraisal. Indeed, we commend this committee for undertaking a reflective, comprehensive debate on intercity passenger rail. Once the role of intercity passenger rail is clearly defined, and whatever organizational form the intercity passenger service takes, we respectfully suggest that Congress and officials at all other involved levels of government must be willing to commit the necessary public resources. Absent a commitment for adequate public funding for intercity passenger rail, its potential will not be realized.

As you deliberate this issue, you should be aware that freight railroads will continue to work cooperatively to help intercity passenger railroading succeed. However, I want to emphasize that it is not the responsibility of our nation's privately-owned freight railroads to subsidize passenger service.

<u>Passenger Rail History</u>

As you deliberate the future of U.S. intercity passenger rail service, it might be helpful to reflect briefly on the history of passenger railroading in this country and the conditions that led to the creation of Amtrak.

Well into the 20th century, railroads were the primary means by which people and freight were transported in this country. In 1930, for example, the rail share of both the intercity freight and passenger markets was around 75 percent. Over time, though, a number of factors, especially the enormous expansion of our nation's highway system and the development of an extensive commercial aviation industry — both accomplished with the help of hundreds of billions of dollars in government subsidies — brought enormous competitive pressures to bear on passenger railroading.

In fact, by the 1930s, passenger railroading had become clearly unprofitable. World War II brought a brief respite, but by the late 1950s, private railroads were losing $750 million per year (about $3.8 billion in 2002 dollars) in fully distributed costs on passenger service, according to an Interstate Commerce Commission (ICC) study.[1] In fact, a noted transportation scholar wrote "it is no exaggeration to say that by 1958 railroad passenger service had demonstrated itself to be the most uneconomic activity ever carried on by private firms for a prolonged period."[2] These massive losses continued because state and federal government regulators often refused railroad requests to eliminate passenger trains no matter how much money the railroads were losing.

By the late 1960s, railroads had managed to obtain regulatory approval to discontinue many purely local trains, and were pursuing the elimination of major trains that comprised the basic elements of the national passenger rail network. By 1970, passenger rail ridership had plummeted to just 11 billion passenger-miles, an 88 percent decline from its 1944 peak of 96 billion, and the cumulative "passenger deficit" — the losses that government regulators forced privately-owned railroads to bear through mandated passenger operations — had reached many billions of dollars.

Unfortunately, the massive passenger losses, in combination with unrelenting competition for freight business from subsidized trucks and barges, led to railroad bankruptcies, line abandonments, deferred maintenance, service deterioration, and general

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[1] Interstate Commerce Commission, "Railroad Passenger Train Deficit, Report Proposed by Howard Hosmer, Hearing Examiner, Assisted by Robert A. Berrien, Fred A. Christoph, and Raymond C. Smith, attorney advisers," Docket No. 31954 , 1958.

[2] George W. Hilton, *The Transportation Act of 1958*, Indiana University Press, 1969, p. 13.

financial deterioration. By 1970, the industry's overall return on investment had fallen to 1.7 percent — less than a child could earn on a passbook savings account.

In 1970, the largest U.S. railroad, the Penn Central, went into bankruptcy. At the time, it was the largest bankruptcy of any company in U.S. history. Not coincidentally, the Penn Central was also the largest passenger railroad in the country.

The Rail Passenger Service Act of 1970 (RPSA) was a response to the real possibility that the United States would soon have no intercity rail passenger service at all, and a recognition that rail passenger losses were a serious threat to the viability of freight railroading. Given the huge financial pressure they faced, it is no surprise that when the RPSA created Amtrak, railroads welcomed the opportunity to rid themselves of their hopelessly unprofitable passenger obligations.

However, the RPSA exacted a hefty price from freight railroads for permission to exit the intercity passenger rail business.

First, freight railroads were required to capitalize Amtrak in cash, equipment, or services. These payments to Amtrak totaled $200 million (approximately $740 million in today's dollars).

Second, the RPSA authorized Amtrak to operate wherever it wished over the privately-owned freight rail network. Amtrak was also granted the power to force freight carriers to convey property to it if the property were necessary for intercity rail passenger transportation.

Third, the RPSA explicitly ordered freight railroads to grant preference to Amtrak trains over their own freight trains or any other customers in the use of any given line of track, junction, or crossing.

Fourth, the RPSA gave the ICC the authority to intervene if Amtrak and the host freight railroad could not agree on the "just and reasonable" compensation due the owner for Amtrak's access. However, a 1973 ICC decision that ordered Amtrak to pay a rate of compensation greater than incremental or avoidable cost was overridden by a 1973 amendment to the RPSA, which allowed Amtrak to pay just the incremental costs of the owning freight railroad caused by Amtrak's use of the tracks.[3]

Railroads that refused to accept the statutory terms offered in the RPSA were required to continue their passenger operations — despite any losses they would incur —for at least four more years. Thereafter, they could seek relief before regulatory agencies, but received no guarantee that they would be permitted to discontinue unprofitable service at that point. All but a few of the railroads accepted the terms of the RPSA and immediately turned over passenger operations to Amtrak, rather than face continuing losses and the uncertainty of the regulatory process.

Future Public Policy Directions

The special statutory privileges regarding its relationship with freight railroads that Amtrak has enjoyed over the past 30 years have amounted to a significant, mandatory, and inequitable subsidization of intercity passenger operations by freight railroads. As you consider the future of Amtrak and intercity passenger transportation, the freight railroads respectfully suggest that it is not possible to "develop a new, clear national policy for intercity

[3] Incremental (or avoidable) costs are those direct costs which result from additional traffic/volume or which would be eliminated by the discontinuance of traffic or a particular activity. Fully distributed (or fully allocated) costs include incremental costs as well as a proportionate share of the fixed and common costs (including the cost of capital necessary to provide the service) allocable to the traffic or service in question. As discussed later, freight railroads must reimburse Amtrak's fully allocated costs for the use of Amtrak's Northeast Corridor, even though Amtrak only reimburses freight railroads at an incremental cost level for the use of their facilities.

passenger rail … that can have the broadest possible base of support," as described by FRA Administrator Allan Rutter, if these inequities are not addressed.

While passenger railroading is important to our country, it pales in comparison to the importance of freight railroading. Our privately-owned freight railroad system is a tremendous national asset. Freight railroads operating in the United States move more freight, more efficiently, and at lower rates than anywhere else in the world, according to Lou Thompson, the World Bank's Railways Advisor. The safe, efficient, and cost-effective transportation service that freight railroads provide is critical to the domestic and global competitiveness of our nation. Indeed, freight railroads are responsible for 41 percent of our nation's intercity transportation service.[4] Therefore, policymakers must find the most effective way to provide the passenger services that America needs, but without burdening the freight rail system — operationally, financially, or in any other way.

Freight railroads have developed a series of principles regarding the future of intercity passenger rail service. Our principles call for future rail passenger public policy to acknowledge the extreme capital intensity of railroading and to ensure that railroads' investment needs can be met. Policies which add to freight railroads' already enormous investment burden, such as further saddling them with support of passenger rail infrastructure needs, or which reduce their ability to provide the quality service needed by their freight customers, must be avoided. To do otherwise would undercut our nation's freight rail capabilities and be counterproductive in addressing our country's congestion, environmental, safety, and economic concerns.

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[4] After a decades-long decline, freight railroad market share bottomed out at 35 percent in 1978 and has since risen to its current level of 41 percent. By contrast, Amtrak accounts for approximately 0.3 percent of intercity passenger travel.

The freight railroad principles are outlined below.

1. Intercity passenger rail service on a broad scale simply is not profitable in this or any other country, and cannot exist without significant government subsidization.

For decades prior to Amtrak's creation, our nation's railroads learned the hard way how difficult it is to recover the full costs of passenger railroading. Although Amtrak was created as a for-profit entity, experience has shown that this is not achievable. No comprehensive passenger system in the world operates today without significant government assistance.

Once policymakers in the Administration, Congress, and the various states agree on the nature and scope of intercity passenger railroading in this country, they must be willing to commit public funds on a long-term basis commensurate with that determination.

2. Freight railroads should receive full compensation for the use of their assets by intercity passenger operators.

As explained above, freight railroads do not profit from Amtrak's operations. Rather, for the past 30 years, freight railroads have heavily subsidized Amtrak by virtue of Amtrak's statutory right of priority access to freight railroads' tracks at incremental cost. An incremental cost basis does not come close to reflecting the full market value of Amtrak's access to the owning railroad's tracks because it does not cover the full operating, capital, and other costs freight railroads incur in hosting Amtrak trains.

This has become an especially important problem over the past decade, as freight railroads are increasingly required to expand the capacity of portions of their networks to accommodate growing traffic volume. In certain locations, railroads are experiencing serious and growing capacity constraints. Ton-miles per mile of road owned, a useful measure of freight traffic density, has risen from 3.9 million in 1970 (when Amtrak was established) to

14.8 million in 2000 — a 279% increase. Largely because of this enormous increase in the intensity of utilization, train "slots" on major freight corridors are as valued as gates and departure times at major airports or berths at some ports.

Moreover, because rail customers often no longer carry large inventories at their plants, railroads must meet their customers' requirements for "just-in-time" or more predictable freight arrival. Consequently, asset utilization has become a crucial management tool and rail infrastructure, crews, communications, and customer satisfaction have come to depend on precise and efficient operations.

Thus, where Amtrak trains fill prized corridor "slots" at bargain prices, the result is a major cross-subsidy from freight to passenger service. It also limits the overall size of certain freight rail markets (because slots are not available to freight trains) and affects the reliability freight railroads can offer their customers. Indeed, Amtrak's priority status results in detrimental impacts on the numerous freight trains on and approaching the corridors traveled by Amtrak that are typically much greater than simply the value of the "slot" occupied by Amtrak.

Internal railroad studies have confirmed that the subsidies involved are substantial. For example, a few years ago, one railroad calculated that its annual subsidy to Amtrak exceeded $56 million per year — and this was without including certain major categories of costs, including the cost of delays to freight trains and the resulting dislocation of freight crews and locomotives.

It is interesting to note that when freight railroads run freight trains over the Northeast Corridor, which is owned by Amtrak, Amtrak charges the freight railroads fully allocated costs, not just incremental costs. In fact, the fees that freight railroads pay Amtrak are many times greater (on a per car basis) than the fees which freight railroads must accept from Amtrak. Thus, railroads are prohibited by statute from treating Amtrak the same way that Amtrak treats freight railroads. Freight railroads should be fully compensated for Amtrak's use of their property, on the same terms that Amtrak is compensated for use of Amtrak's property.

3. Freight railroads should not be expected to further subsidize intercity passenger rail service, either through new taxes or the diversion of existing taxes (notably the 4.3 cents per gallon deficit reduction fuel tax).

If policymakers determine that intercity passenger service provides essential public benefits, then the costs of the passenger service (including the costs of maintaining and, where necessary, building new rights-of-way to passenger-rail standards) should be borne by the public, not by freight railroads. For 30 years, freight railroads have subsidized Amtrak. Forcing them to continue on this basis will seriously hinder freight railroads' ongoing efforts to provide safe, efficient, and cost-effective transportation service.

Indeed, to force freight railroads to continue to subsidize passenger operations would be supremely inequitable. Freight railroads are suppliers to Amtrak. As such, they should be treated the same as those who supply Amtrak with locomotives, passenger cars, diesel fuel, electricity, and provisions for the dining car. Nor should freight railroads be held to a loftier "public interest" standard. Highway contractors are not required or expected to bid below cost because highways are in the public interest. The same rules should apply to railroads.

The 4.3 cents per gallon deficit reduction fuel tax paid by railroads deserves special mention. This tax should be repealed — not diverted to any other purpose — so that freight railroads can channel these funds into needed infrastructure and equipment. Diverting this tax to fund intercity passenger rail would perpetuate the inequities faced by freight railroads, because they would continue to derive no benefit from a tax they pay but their primary competitors do not.

4. Amtrak should have as its business focus the safe transport of passengers. Therefore, subsidized passenger authorities, including Amtrak, should not have a statutory right to carry "mail and express," but should be required to negotiate arrangements in these areas with the right-of-way owners.

Amtrak was created as a passenger service company that, by focusing its management attention on passengers rather than on freight, would have an opportunity to resuscitate America's passenger trains. Congress intended for Amtrak to have freight operations only incidental to its passenger service. Congress did not envision Amtrak establishing and scheduling ostensibly "passenger" trains for the primary purpose of serving freight needs and carrying passengers as an incidental activity.

Indeed, allowing Amtrak to transport general freight traffic under the auspices of "mail and express" service should not be allowed under the terms of access Amtrak currently enjoys regarding freight railroads' facilities.[5] Because Amtrak currently need only cover freight railroads' incremental costs — with no requirement that Amtrak contribute to the owners' fixed costs or profit — allowing Amtrak (or any other passenger authority) to carry freight forces freight railroads to subsidize their own competitors. Moreover, given Amtrak's operating priority over freight railroad operations, allowing Amtrak to carry freight forces freight railroads to sacrifice their own competitive operational schedules in favor of Amtrak freight movements.

The special terms of access and other privileges granted Amtrak by the RPSA make sense only in the context of a clear-cut distinction between Amtrak's passenger activities and

[5] Mail and express traffic commonly refers to expedited delivery service involving small shipments.

other railroads' freight operations. Statutorily authorizing Amtrak to transport carload and trailerload movements of freight under its "express" authority obliterates that distinction.

5. Safety requirements and the integrated nature of railroading necessitate that intercity passenger rail be provided by one entity — Amtrak. Further, Amtrak's right of access, preferential access rates, and operating priority should not be transferred or franchised.

One of Amtrak's fundamental purposes was to amalgamate several hundred disjointed passenger trains operated by more than 20 individual carriers into a coherent intercity passenger rail system. It was envisioned that a single carrier would yield greater efficiency and innovation. This approach remains just as sensible today.

Moreover, the terms and conditions by which Amtrak uses freight-owned tracks were set by Congress more than 30 years ago under circumstances vastly different from today. As noted above, at that time freight railroads were losing hundreds of millions of dollars per year on passenger trains they were forced by the government to operate. In order to be relieved from these huge losses, freight railroads accepted terms covering Amtrak's use of their tracks that under other circumstances would have been unacceptable. Moreover, freight railroads did not agree to an "open door" policy and balkanized structure that would allow any number of state, regional, or local entities to claim access to their assets.

Further, freight railroads knew that Amtrak's obligations were, in essence, the obligations of the United States and that Amtrak would be operated safely and professionally. Should Amtrak intercity services be transferred to other passenger operators, it is unclear under what circumstances the transfer would be made and what characteristics would apply to the operators. For example, private entities might have different degrees of financial backing; public authorities might or might not enjoy the full faith and credit of their sponsoring states;

and some prospective passenger rail operators might be less committed to safety and sound operating standards than Amtrak.

If others are asked to provide Amtrak-like services, freight railroads must retain the right to negotiate terms (at arms length, free of governmental intervention) under which those providers will gain access to the freight railroad's right of way. Freight railroads must become satisfied that acceptable operating practices and dedication to safety will be observed before they allow use of their facilities.

Finally, freight railroads view the granting of statutory access to other passenger operators to be a "taking" of private property, which requires just and reasonable compensation under the Constitution.

6. Amtrak's present obligations, notably those under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, must not be shifted to the freight rail industry and its employees.

Railroad employees and retirees are not covered by Social Security. Instead, they are covered by Railroad Retirement, a government sponsored and managed pension plan funded by payroll taxes on railroad employers and employees. Railroad Retirement covers the full rail industry, including freight, Amtrak, and commuter railroads; rail labor and trade organizations; rail lessor companies; and miscellaneous railroad affiliates.

Like Social Security, Railroad Retirement is a pay-as-you-go system: payroll taxes for current employees are used to provide current retiree benefits. Railroad Retirement is also a pooled system in which all rail participants contribute at the same statutory rates, all rail industry employees receive standardized retirement and survivor benefits based upon their years of service and earnings, and participating employees are assured of benefits regardless of the fate of their particular employers.

The integrity of such a system is based upon *all* participating entities contributing based on the current number of active workers employed. It is inequitable for a single firm, especially one as large as Amtrak (which accounts for approximately 10 percent of the rail industry work force), to suddenly be granted special relief from a pooled, pay-as-you-go system. Simply removing Amtrak from the Railroad Retirement system, in whole or in part, would force the remaining participants — primarily freight railroads and their employees — to shoulder the burden of maintaining the viability of the system.

7. Future high-speed passenger rail corridors should be separate, dedicated, and "sealed."

Amtrak's existing high-speed Northeast Corridor operations have proven popular over the years, and many envision high-speed rail service to be a primary component of future intercity passenger rail operation elsewhere in the nation. High-speed rail passenger service is an integral part of passenger rail operations in countries around the world, including France, Germany, Japan, and Spain. Where high-speed rail exists outside the United States, however, governments have supplied the massive amounts of funding it requires.

Given the expense involved, the expansion of high-speed passenger rail service throughout the United States presents serious challenges. To operate safely, high-speed passenger rail operations require the construction of separate, dedicated tracks (a point properly recognized by H.R. 2950, the Rail Infrastructure Development and Expansion Act for the 21st Century). Further, grade crossings must be eliminated (either through closure or through the construction of highway underpasses or overpasses). These are exceedingly expensive undertakings and will require firm, long-term commitments by the appropriate authorities, since they are necessary for successful implementation of high-speed projects.

Other Issues Related to Intercity Passenger Rail

Freight railroads have not taken a position on certain issues that are more properly addressed by other parties. For example, the selection of intercity passenger rail routes is inherently a public policy question. Freight carriers believe that corridors should be chosen as much as possible based on potential ridership and other accepted economic factors. Once a corridor has been proposed, if it involves the use of freight railroads' property, the freight railroads will work with the appropriate entities to determine what needs to be done to provide capacity adequate to allow both freight and passenger service to operate safely and on-time, including whether a shared-use arrangement is feasible or if a separate right of way for passenger operations will be required.

Summary

Congress has before it a difficult mission: to fashion a realistic, fair, and workable solution to the serious problems facing intercity passenger rail in the United States. In reaching that solution, we strongly urge you to incorporate the principles detailed above. Doing so will help ensure that freight railroads continue to play a vital role in our nation's economic prosperity and global competitiveness.

Freight railroads look forward to working cooperatively with this Committee, with Amtrak, and with others to achieve this worthy goal.